

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1163 of 1996

in

SPECIAL CIVIL APPLICATION No 3524 of 1996

With

CIVIL APPLICATION NO.8373 OF 1996

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

G S R T C

Versus

MOHMAD IBRAHIM DAULA

Appearance:

1. LETTERS PATENT APPEAL No. 1163 of 1996
MR.DEVNANI for
MR YOGESH S LAKHANI for Appellants
NOTICE SERVED for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 13/11/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. The appellant Corporation has challenged by way of filing this Letters Patent Appeal the order passed by the learned single Judge on 30.7.1996 in a petition filed by the respondent workman, namely, Shri Mohmad Ibrahim Daula against the appellant Corporation being Special Civil Application No.3524 of 1996 and the Corporation has also taken out a separate Application for stay being Civil Application No.8373 of 1996.

2. Mr.Devnani, learned advocate appearing on behalf of the appellant Corporation, has taken us through the Appeal papers as well as the copy of the petition filed by the respondent workman being Special Civil Application No.3524 of 1996 and the Annexures to the said petition. The respondent is duly served in this Appeal and Mr.Devnani has informed us that the main petition being Special Civil Application No.3524 of 1996 is pending for final decision before this court. As found, the main petition filed by the respondent workman is pending and the challenge in this Appeal is only in respect of the order passed by the learned single Judge dated 30.7.1996 while issuing rule wherein the learned single Judge has passed order regarding interim relief in the said petition. As found from the order under challenge dated 30.7.96 the court has passed the following order:-

"Rule. Heard Mr.H.K.Rathod for petitioner and Mr.Y.S.Lakhani for respondent for interim relief. In the facts and circumstances of the case recovery of subsistence allowance already paid from 16/6/82 is stayed. However, order putting the workman in the minimum time scale of pay with effect from 1/2/96 is not stayed."

3. When the said order was challenged by filing this L.P.A. the court has admitted the Appeal and in an Application for stay filed by the Corporation being Civil Application No.8373 of 1996 ex parte order was passed on 15.1.1997 which reads as under:-

"Rule. Ad interim relief only to the effect that the order putting the workman in the minimum time scale

of pay w.e.f. from 16.8.1982 is not stayed. The learned Single Judge had mentioned that the order w.e.f.1.2.1996 is not stayed. By this interim order, it is directed that the order putting the workman in the minimum of time scale of pay w.e.f. 16.8.1982 is not stayed."

4. Though the Division Bench as back as on 15.1.1997 issued rule to the respondent and though the respondent is duly served, the Application for stay is not notified for final hearing till date and it is only the Application is notified with the main L.P.A.

5. As found, the challenge made in this Appeal is in respect of the interim order passed by the learned single Judge while issuing rule in the main petition filed by the respondent workman and the petition is still pending for final hearing and the Corporation has got protection in view of the order passed in the Civil Application for stay being Civil Application No.8373 of 1996, which we have already discussed earlier and it will be in the fitness of things that this L.P.A. deserves to be disposed of without entering into merits and contentions raised by the appellant Corporation and the order passed by the Division Bench has in fact operated in the field and as the Special Civil Application No.3524 of 1996 is pending before this court, it will be in the interest of justice to see that the said Special Civil Application No.3524 of 1996 is ordered to be notified before the court taking up such matters at an early date. Accordingly Special Civil Application No.3524 of 1996 is ordered to be listed before appropriate court for final hearing as early as possible. With this observation, Letters Patent Appeal is disposed of with no order as to costs.

6. Accordingly Civil Application No.8373 of 1996 is also disposed of. Rule discharged with no order as to costs. The interim order passed by the Division Bench will operate till the final disposal of the main Special Civil Application.

(D.K.Trivedi, J)

(Sharad D.Dave, J)

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